

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
<b>Mercury Broadcasting Company, Inc.</b>	)	Facility ID No 77063
	)	NAL/Acct. No. 0841420049
Licensee of Station KMTW(TV) <sup>1</sup>	)	FRN: 0004995882
Hutchinson, Kansas	)	

**FORFEITURE ORDER**

**Adopted: May 3, 2010**

**Released: May 4, 2010**

By the Chief, Video Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of sixteen thousand dollars (\$16,000) to Mercury Broadcasting Company, Inc. (“Licensee”), licensee of Station KMTW(TV), Hutchinson, Kansas (“Station”), for its willful and repeated violation of Section 73.670 of the Commission’s Rules (“Rules”) by failing to comply with the limits on commercial matter in children’s programming.<sup>2</sup>

**II. BACKGROUND**

2. On June 18, 2008, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of sixteen thousand dollars (\$16,000) to Licensee for this violation.<sup>3</sup> Licensee filed a Response to Notice of Apparent Liability for Forfeiture (“Response”) on July 18, 2008.

3. On January 26, 2006, Licensee filed an application to renew the license of the Station (“Application”) (File No. BRCT-20060126AEM). In response to Section IV, Question 5 of the Application, the Licensee stated that, during the previous license term, the Station failed to comply with the limits on commercial matter in children’s programming specified in Section 73.670 of the Rules. In Exhibit 19, Licensee indicated that between May 31, 2002, and July 10, 2002, the Station exceeded the children’s television commercial limits on six occasions when it aired a commercial featuring the character, “Buzz Lightyear” during the “Buzz Lightyear” program. Licensee described measures that were taken to prevent the recurrence of such errors. On June 18, 2008, the staff advised Licensee of its apparent liability for a forfeiture of \$16,000 for willfully and repeatedly violating Section 73.670 of the Rules. The NAL noted that the Station exceeded the Commission’s commercial limits on six occasions, and that all of the overages were program-length commercials.

4. In its Response, Licensee argued that the proposed forfeiture amount of \$16,000 is excessive in light of “the nature of the violations and the isolated occurrence during the entirety of its license tenure.” In support of its argument, Licensee referred to \$16,500 fines assessed against two other

<sup>1</sup> On August 1, 2006, the Station’s Call Sign was changed from KSCC(TV) to KMTW(TV).

<sup>2</sup> See 47 C.F.R. § 73.670.

<sup>3</sup> *Mercury Broadcasting Company, Inc.*, 23 FCC Rcd 9298 (MB 2008).

television stations, *WLFL Licensee, LLC*,<sup>4</sup> and *WCIU-TV Limited Partnership*.<sup>5</sup> Licensee opined that its case is “easily differentiated” from the two cited cases, since the licensees in those two cases reported a greater number of violations occurring over a longer time period than the period of the violations reported by Station KMTW(TV). Nonetheless, argued Licensee, the forfeiture amounts issued are “almost equivalent.” For these reasons, Licensee asserted that the forfeiture assessed against it should be reduced.

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>6</sup> Section 1.80 of the Rules,<sup>7</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>8</sup> In assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>9</sup>

6. We disagree that exceeding the children’s television commercial limits on six occasions, all program-length commercials, constitutes an “isolated occurrence” and therefore, the proposed forfeiture amount should be reduced. As stated in the NAL, Congress was particularly concerned about program-length commercials because young children often have difficulty distinguishing between commercials and programs. S. Rep. No. 227, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess. 24 (1989). Given this congressional concern, the Commission made it clear that program-length commercials, by their very nature, are extremely serious violations of the children’s television commercial limits, stating that the program-length commercial policy “directly addresses a fundamental regulatory concern, that children who have difficulty enough distinguishing program content from unrelated commercial matter, not be all the more confused by a show that interweaves program content and commercial matter.”<sup>10</sup> The number and magnitude of overages at issue here mean that children have been subjected to commercial matter greatly in excess of the limits contemplated by Congress when it enacted the Children’s Television Act of 1990.<sup>11</sup>

7. Licensee pointed out that the licensees in the cited cases reported a greater number of violations. However, as Licensee has acknowledged, the forfeiture amount assessed here is lower than the forfeiture amounts issued in cases cited by Licensee.

8. We have considered Licensee’s response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>12</sup> and

<sup>4</sup> 23 FCC Rcd 8182 (MB 2008) (\$16,500 notice of apparent liability for nine children’s television commercial limits violations, including six program-length commercials).

<sup>5</sup> 23 FCC Rcd 4506 (MB 2008) (\$16,500 notice of apparent liability for nine children’s television commercial limits violations, including six program-length commercials).

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>9</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>10</sup> *Children’s Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

<sup>11</sup> *Children’s Television Programming*, 6 FCC Rcd at 2117-18.

<sup>12</sup> Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-

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repeatedly<sup>13</sup> violated Section 73.670 of the Rules at the Station and that no mitigating circumstances warrant cancellation or reduction of the proposed forfeiture amount.

#### IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,<sup>14</sup> that Mercury Broadcasting Company, Inc., SHALL FORFEIT to the United States the sum of \$16,000 for willfully and repeatedly violating Section 73.670 of the Commission's Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>15</sup> Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

11. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>16</sup>

12. IT IS FURTHER ORDERED that copies of this Forfeiture Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Mercury Broadcasting Company, Inc., 115 E. Travis, Suite 533, San Antonio, Texas 78205, and to its counsel, Harry C. Martin, Esquire, Fletcher, Heald & Hildreth, P.L.C., 1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, Virginia 22209-3801.

#### FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387-88 (1991), *recon. denied* 7 FCC Rcd 3453 (1992) ("*Southern California*").

<sup>13</sup> Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>14</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>15</sup> 47 U.S.C. § 504(a).

<sup>16</sup> *See* 47 C.F.R. § 1.1914.